

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA**

*In the matter of an application for mandates in
the nature of Writs of Certiorari, Quo Warranto
and Mandamus under and in terms of Article 140
of the Constitution.*

Sunethra Rupasinghe
153/9A, Shalawa Road,
Mirihana,
Nugegoda.

Petitioner

Vs.

CA/WRIT/627/2021

1. D. S. K. Pushpakumara, SSP- President
2. R. Maheshwaran- Vice President
3. D. S. Wijesinghe, SP- Vice President
4. W. M. P. Fernando-Vice President
5. G. D. Mathiyalagan- Vice President
6. P. Vishwanathan- Secretary
7. K. Jayarathnam- Treasurer
8. B. M. D. T. B. Basnayake- Assistant
Secretary
9. G. S. Kapukotuwa- Assistant Treasurer

1st to 9th above, ALL:
Office Bearers, Sri Lanka Hockey
Federation
C/o: P. Vishwanathan, Secretary,
E-7, Anderson Flats, Park Road,
Colombo 05.

10. Amal Edirisuriya
Director General of Sports

11. Upali Samaraweera- President
12. N. A. T. Jayasinghe- Member
13. Upali Jayathilake- Member

11th to 13th above, ALL OF:
Elections Committee 2021- SL Hockey
Federation
C/o: Director General of Sports

14. K. S. Peiris- President
15. K. G. Wijesiri- Member
16. N. K. Abeysinghe- Member

14th to 16th above, ALL OF:
Appeals Advisory Committee

17. Namal Rajapakshe, MP
Hon. Minister of Youth and Sports

10th to 17th above, ALL OF:
Ministry of Youth and Sports
09, Phillip Gunawardena Mawatha,
Colombo 07.

Respondents

Before : Sobhitha Rajakaruna J.
Dhammika Ganepola J.

Counsel : Chrishmal Warnasuriya with Isuru Somadasa for the Petitioner.
Faiszer Musthapha, PC with M. Careem and Ashen Bandara for the 1st,
3rd, 6th and 7th Respondents.
Sumathi Dharmawardhena, ASG PC with Medhaka Fernando, SC for
the 10th to 17th Respondents.

Supported on : 23.03.2022

Written submissions : Petitioner -08.04.2022

1st, 3rd, 6th and 7th Respondents -19.04.2022

10th to 17th Respondents -07.04.2022

Decided on : 08.06.2022

Sobhitha Rajakaruna J.

The Petitioner of this application, on or around 04.08.2019 participated in a live talk show by the name of “Inside Sports” hosted by “Sirasa TV” in which she has alleged to have enumerated several false information with regard to the administration of the Sri Lanka Hockey Federation (‘SLHF’). As a result of such alleged expression of false information, the Petitioner was temporary suspended from her membership of the SLHF from 21.08.2019 (as depicted in letter marked as ‘P11’). Thereafter, on or about 20.10.2019, the Petitioner has been served with a charge sheet marked ‘P17’ for violating Section 27(d) of the Constitution of the SLHF. Subsequently, the Petitioner was called for an inquiry and following such inquiry, the 14th to 16th Respondents have determined that the Petitioner was in violation of the said Section 27 (d) of the Constitution of SLHF.

In response to an appeal made by one Surein Wijeratne (who also participated in the above programme) to the then Minister of Sports (for which the Petitioner was not a party), the SLHF has received a letter on or around 08.01.2020, from the Director General of Sports Development marked as ‘P19’ directing that the suspension of the membership of the Petitioner, Surein Wijeratne and Diluka Weerasekara be limited to a period of six months.

Consequent to the said events, by way of a decision of the 11th to 13th Respondents dated 08.04.2021 marked as ‘P29’, the nominations of the Petitioner for the posts of President and Vice President for the election year 2021 were rejected and following were articulated as the reasons for such rejection;

- i. The certificates attached in support of the Petitioner’s application did not meet the accepted criteria for the purpose of nomination;
- ii. The letter dated 08.01.2020 marked as ‘P19’ contains a decision to reduce the suspension of the membership of the Petitioner for a period of 06 months;

- iii. The Petitioner has not fulfilled the required qualifications stipulated in the Constitution of National Association of Sports published in the Extraordinary Gazette Notification No. 1990/23 dated 27.10.2016.

Thereafter, on or around 02.11.2021, SLHF has held the Election for the year 2021 and the 1st to 9th Respondents were elected as the office bearers as stated in document marked 'P40'.

Subsequently, the Petitioner has filed the instant application seeking writs in the nature of Certiorari;

- i. to quash the charge sheet dated 20.10.2018 marked as 'P17';
- ii. to quash the purported direction dated 08.01.2020 marked as 'P19';
- iii. to quash the purported determination of the 11th to 13th Respondents rejecting the Petitioner's nomination contained in letter dated 21.04.2021 marked as 'P33'
- iv. to quash the purported determination of the 14th to 16th Respondents dated 07.11.2021 marked as 'P34(b)';
- v. to quash the purported determination of the 10th Respondent dated 25.10.2021 marked 'P39';
- vi. to quash the purported election of the 1st to 5th Respondents as office bearers of the SLHF at the recently concluded election on the 02.11.2021 as manifested by 'P40'.

Additionally, the Petitioner seeks for a mandate in the nature of a writ of Mandamus directing the 17th Respondent to act in terms of the Sports Law (Sports Law, No. 25 of 1973) and appoint an Interim Committee to look into and rectify the affairs, management and demonstration of the SLHF.

All the Respondents raised preliminary objections on the basis that (i) the Petitioner's application is ex facie futile, frivolous and vexatious; and (b) the Petitioner is guilty of laches or unexplained delay in presenting the instant application and accordingly, the Respondents moved that the application of the Petitioner be dismissed in limine.

The Respondents state that upon a charge sheet being served for violating Section 27(d) of the Constitution of the SLHF, the Petitioner was called for an inquiry to present her case whereby the Petitioner has participated in such inquiries with her Attorney-at-law and has

submitted statements of defence in writing. Therefore, the Respondents submit that due process has been followed by the Respondents before taking disciplinary action against the Petitioner.

As per paragraph 13 of the Petition, the Petitioner admits to the fact that she received the charge sheet marked 'P17' and further states at paragraph 14 that she attended an inquiry pertaining to the said charge sheet on the 27.10.2019. The Petitioner has filed the instant application in this Court on 10.12.2021, just over a period of two years of issuing the said charge sheet. However, the Petitioner has failed to adduce any reasons as to why she has not challenged the said charge sheet before participating at the inquiry process.

Further, in paragraph 16 of the Petition, the Petitioner admits to receiving the direction dated 08.01.2020 marked as 'P19' on or around January 2019, but once again has failed to explain the delay in challenging such decisions.

Moreover, the Respondents submit that the Petitioner was aware of the determination dated 07.11.2019 (issued by the 14th to 16th Respondents) marked 'P34(b)' by the 25.04.2021, as such was mentioned in paragraph 35 of the Petition. The Respondents further states that though such was mentioned in the Petition, the Petitioner has not provided any reasoning as to why she had failed to challenge even the Inquiry report marked along with 'P34(b)' until the instant application was filed on 10.12.2021.

Therefore, now it is important to examine as to whether such conduct of the Petitioner and the delayed application for judicial review is reasonable. In ***Judicial Remedies & Public Law (4th ed.) at para. 9-17***, Lewis states as follows;

"The claimant should challenge the decision which brings about the legal situation of which complaint is made. There are occasions when a claimant does not challenge that decision but waits until some consequential or ancillary decision is taken and then challenges that later decision on the ground that the earlier decision is unlawful. If the substance of the dispute relates to the lawfulness of that earlier decision and if it is that earlier decision which is, in reality, determinative of the legal position and the later decision does not, in fact, produce any change in the legal position, then the courts may rule that the time-limit runs from that earlier decision."

As I have discussed in my judgement *K.G.D Walter Abeysundera and another vs. Mr. S. Hettiarachchi, Secretary, Ministry of Tourism and other, CA/Writ/371/2021 (decided on 22.09.2021)*, I am of the view that in instances where the impugned action takes place in stages, the challenge should be launched against the earliest stage rather than the final and decisive stage¹.

In the circumstances, when analyzing the reliefs prayed for by the Petitioners, it is my view that the Petitioner's conduct, particularly the acquiescence in the inquiry procedure should be taken into consideration. The Petitioner, without recouring to this Court by way of a judicial review application against the said charge sheet at the initial stage, has participated in the other stages of the inquiry and accordingly, has waited until she got an unfavourable decision following the inquiry. In juridical review, the Court is concerned with the legality of a decision and also whether it is lawful or unlawful. Accordingly, the said conduct of the Petitioner, in my view, has intensified the delay to apply to this Court at the first instance. Further the Petitioner has failed to furnish any justifiable explanation for her delay in challenging the documents marked 'P17' dated 20.10.2019, 'P19' dated 08.01.2020 and 'P34(b)' dated 07.11.2019. Therefore, in my view, the Petitioner is guilty of laches and has failed to explain the delay in challenging the preliminary stages of the inquiry including the charge sheet marked 'P17'.

Now, I advert to examine whether the Petitioner has submitted a prima facie case irrespective of the fact that she is guilty of laches as I have explained above.

By virtue of the letter dated 21.08.2019 marked 'P11', the Petitioner has been suspended from her membership of the SLHF from 21.08.2019. The Petitioner pleads that at the time the nominations for the Election were called on or about 15.03.2021, the Petitioner was under the impression that the ban on her membership had been set aside and that there would be no further action taken against her by any authority.

The learned President's Counsel for the 1st, 3rd, 6th and 7th Respondents and the learned Additional Solicitor General ('ASG') for the 10th to 17th Respondents assert that the

¹ See R vs Secretary of State for Trade and Industry ex p. Greenpeace [1998] COD 59 and R (Burkett) vs. Hammersmith & Fulham LWC [2002] 1 WLR 1593 (HL)

Election Committee of the SLHF rejected the Petitioner's nominations in terms of the Regulations 5(4)(p) made by the Minister by Extraordinary Gazette bearing No. 1990/23 dated 27.10.2016. The said Regulation 5(4) reads as follows;

5(4) A person shall be disqualified from being elected or otherwise to hold or continue to hold any paid or unpaid office or to hold any paid or unpaid post or to be a member of a Committee of any National Association of Sports or to be nominee of an affiliated club or organization in a National Association of Sports, if:-

(p) he is either serving a ban, suspension or prohibition imposed by the decision making body of such National Association of Sports or a competent body established by such National Association of Sports or by the International Sports Organization to which is affiliated or a period of **two years have not lapsed after serving such ban, suspension or prohibition on the date of submission of nominations.** (Emphasis added)

The contention of the learned Counsel for the said Respondents is that the Petitioner has submitted the nominations for the 2021 election (on 31.03.2021) before lapsing of a period of two years since her suspension (21.08.2019) from membership and therefore, the Petitioner is not eligible to contest for the said election.

If proper attention is paid to the said regulation 5(4)(p) of the Extraordinary Gazette bearing No. 1990/23 dated 27.10.2016, it is apparent that an individual is disqualified from being elected until a period of two years have lapsed after **servng** such ban, suspension or prohibition on the date of submission of nomination. Therefore, in my view, the commencement of such two-year period in respect of the Petitioner should be enumerated not from 21.08.2019 (date of suspension) but from 21.02.2020 (the date after serving the suspension for a period of six months).

Therefore, I am of the view that a period of two years has not lapsed by the time the Petitioner submitted her nominations and thereby rejecting her nominations by the Elections Committee is lawful.

The Regulation 8 of the National Association of Sports Regulations No. 01 of 2016 (as amended by the Regulations contained in Extraordinary Gazette Notification No.

2207/07 dated 23.12.2020) indicates that an appeal against a decision or action of a National Association of Sports must be made in writing to the Minister **within 7 days** of the receipt of such decision. The learned ASG asserts that as per paragraph 34 of the Petition, it is evinced that the Petitioner was possessed with the decision of the National Association of Sports on the rejection of the Petitioner's nominations for the Election by 21.04.2021. However, she has appealed to such decision only on 11.05.2021 (see-'P36'), that is almost two weeks after the said decision. Hence, the learned ASG submits that the said Appeal, 'P36' was clearly made out of time in violation of the mandatory time period prescribed by the regulations.

In the above backdrop, I see no reason to grant any relief to the Petitioner in reference to 'P17', 'P19', 'P33', 'P34(b)', 'P39' & 'P40' as prayed for in the prayer of the Petition. In addition to the mandates in the nature of writs of Certiorari sought by the Petitioner in the instant application, a writ of Quo Warranto is also being sought. I take the view that the nature of formulating the said relief as per in paragraph (d) of the prayer of the Petition is misconceived in law. Further, I take the view that the relief for a mandate in the nature of Mandamus as prayed for in the paragraph (e) of the prayer of the Petition is beyond the scope of the contents in the body of the Petition.

Thus, based on the arguability principles that should be adopted in respect of matters relating to issuance of notice in a judicial review application, I arrive at the conclusion, that there is no arguable case or a prima facie case for this Court to issue formal notice on the Respondents of this application. Therefore, I proceed to refuse this application.

Judge of the Court of Appeal

Dharmika Ganepola J.

I agree.

Judge of the Court of Appeal